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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/574,483	11/14/2006	Stefano Visona	VISONA 2	9136		
1444	7590	06/08/2009	EXAMINER			
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				TEATERS, LINDSEY C		
ART UNIT		PAPER NUMBER				
3742						
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/574,483	VISONA, STEFANO	
	<b>Examiner</b>	<b>Art Unit</b>	
	LINDSEY C. TEATERS	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 November 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-13 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 03 April 2006 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>04/03/2006</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 5 is objected to because of the following informalities: Line 4, "able to exert a pressure" should be --able to exert a pressure--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. The term "substantially" in claim 1 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear to what degree the axis Y of the rotating platform is vertical.
4. Claim 1 recites the limitation "said plurality" in line 9. There is insufficient antecedent basis for this limitation in the claim. Claim 1 previously recites a plurality of operating stations.

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5. Claim 5 recites the limitation "said first dispensing station" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 1 does not recite a first dispensing station.

6. Claim 5 recites the limitation "said first distribution unit" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim. Claim 1 does not recite a first distribution unit.

7. Claim 7 recites the limitation "first means" in line 6. There is insufficient antecedent basis for this limitation in the claim. Claim 1 recites a first movement means.

8. Claim 9 recites the limitation "said second distribution unit" in line 2. There is insufficient antecedent basis for this limitation in the claim. Neither claim 1 nor claim 7 recite a second distribution unit.

9. Claim 9 recites the limitation "said second dispensing station" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. Neither claim 1 nor claim 7 recite a second dispensing station.

10. Claim 12 recites the limitation "said distribution unit" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is unclear to which distribution unit claim 12 is referring.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-2, 4-6, 8-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lunin (US 3,605,640).

Lunin teaches:

Re claim 1: Machine (figure 1) for the production of multilayer food products, in particular for the production of multilayer cakes or similar products (col. 1, lines 30-32), characterized in that it comprises a support structure constrained to the floor (1, figure 1), a rotating platform (2, figure 1) with a substantially vertical axis (see figure 1) mounted on the support structure, a plurality of operating stations (7-12, figure 1) able to operate in sequence on the food product and associated with different sectors of the rotating platform (see figure 1), the plurality comprising at least one station for loading different layers of pastry (at 3, figure 1), one or more dispensing stations (7, 8, 10, figure 1), each provided with a unit for distributing a filling product, at least one station for expelling (12, figure 1) the food product formed, first movement means (col. 3, lines 8-15, see 15, figure 1) to displace the distribution unit or a surface supporting the food product between different heights of the food product, the distribution unit being thus able to intervene cyclically several times on a same food product from a predetermined height (col. 4, lines 42-48).

Re claim 2: at least one first (7, figure 1) and one second (8, figure 1) dispensing station with corresponding first and second units for distributing a same or different filling products (col. 2, lines 63-66).

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Re claim 4: the loading and expulsion stations are arranged on adjacent sectors (see figure 1).

Re claim 5: the first dispensing station comprises compression means (18, figure 1) mounted on the first distribution unit and able to exert a pressure on the upper surface of the food product (plate 18 impregnates the cake with nozzles, and therefore exerts pressure on the upper surface of the food product).

Re claim 6: the compression means comprise a movable framework (col. 3, lines 8-15) and a pressing surface (18, figure 1) which can be actuated by a first actuator mounted on the first distribution unit between a rest position, where the pressing surface does not interfere with the food product and a compression position where the pressing surface compresses the food product with a predetermined force (height that platform rises is predetermined, col. 5, lines 6-12).

Re claim 8: the pressing surface is mounted on the first distribution unit (7, figure 1) underneath the head and is provided with a plurality of holes arranged opposite the nozzles (18, figure 1 corresponds to a pressing/impregnating plate with holes through which liquid flows into the food product).

Re claim 9: the second distribution unit of the second dispensing station is provided with second movement means (col. 3, lines 30-39) mechanically connected to the head so as to displace the latter between a lowered distribution position, where the head is positioned at

a predefined distance from the food product, and a raised rest position, where the head is situated at a greater distance from the food product and where delivery of the filling product is interrupted (col. 3, lines 30-39).

Re claim 10: the first distribution unit is intended to spread a liquid product over the food product (col. 2, lines 63-65).

Re claim 11: the second distribution unit is intended to spread a creamy product over the food product (col. 2, lines 65-66).

Re claim 13: the expulsion station (12, figure 1) is provided with a support base which is actuated by a second actuator (col. 4, line 74 through col. 5 line 5) so to be displaced between a bottom position where it receives the food product from the rotating platform and an upper position where, by means of pusher means, it directs the food product towards an exit opening (col. 4, lines 60-62).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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14. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lunin (US 6,605,640) in view of Smith (US 2,200,347), cited by applicant.

Lunin teaches a multilayer cake machine with all of the stations suggested in present case and several additional stations. Although Lunin does not specifically limit his machine to only four stations, it would have been inherent to discard of certain stations deemed unnecessary for a specific process.

Lunin fails to teach that the stations are associated with sectors of the rotating platform spaced from one another at intervals of 90 degrees.

Smith, however, teaches a rotating platform (1, figure 1) with pie making stations (A, B, D, and F) spaced from one another at intervals of 90 degrees.

In view of Smith's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a rotating platform, taught by Lunin, where the stations are spaced from one another at 90 degree intervals. A circular rotating platform is well recognized in the art of manufacturing, not only in food products, but other areas as well. If there are four workstations, it is logical to assume that each would be designated equal space such that the stations are divided up into 90 degree quarters. If there were, for example, six stations, it would be reasonable to assume that each station would be designated a 60 degree area slice of the platform.

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15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lunin (US 6,605,640).

Lunin teaches:

Re claim 7: each distribution unit is provided with a head having at least one nozzle (see 18 and 19, figure 1) for delivering the filling product onto the food product at a predetermined distance from the latter which is reached by means of operation of the first means for performing movement between the different operating heights (col. 5, lines 6-24).

Lunin discloses the claimed invention except for that the second distribution unit (8, figure 1) has a head with a plurality of nozzles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a head with multiple nozzles, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

16. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lunin (US 3,605,640) in view of Weger (US 4,202,260).

Lunin discloses the claimed invention as set forth above except that the distribution unit is provided with two separate heads supplied with two separate filling products intended to be operated alternatively depending on the filling product to be distributed.

Weger, however, teaches a distribution unit (30, figure 2) with two separate heads (42, 46, figure 2) supplied with two different filling products (col. 20, lines 55-60, see 82, 84, figure 2) and intended to be operated alternatively depending on the filling product to be distributed (col. 21, lines 5-61).

In view of Weger's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a distribution unit, taught by Lunin, with two separate heads to alternately disperse different filling products. The food product may be wished to be customized such as to contain one filling and not another or both. Therefore, it is beneficial to include multiple heads containing different fillings such that all options are readily available during manufacture.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fullerton (US 3,669,005) teaches a cream filling apparatus with a pressing plate, multiple nozzles, and lifting of pan to control compression.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY C. TEATERS whose telephone number is 571-270-5913. The examiner can normally be reached on Mon-Thur 8:30am-6:00pm :: alternating Fri 8:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LINDSEY C TEATERS/  
Examiner, Art Unit 3742

05/27/2009  
/TU B HOANG/  
Supervisory Patent Examiner, Art Unit 3742